THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.12531 of 2005

DATE: 14-09-2005

Between:

M/s. Hari Medical Agencies,

Rep. by its Managing Partner,

Y. Satyanarayana S/o. Subramanyam,

aged 37 years, Inderbagh, Sultanbazar,

Hyderabad. .. Petitioner

AND

The Assistant Commissioner of

Commercial Taxes (INT),

Charminar Division, Nampally,

Hyderabad & another .. Respondents

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.12531 of 2005

ORDER: (Per Hon'ble Mr. Justice B. Sudershan Reddy)

The petitioner herein invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking the relief of refund of tax of Rs.1,40,204/- and the compounding fee being one time of the tax due i.e. Rs.1,40,204/- collected by the 1st respondent on 27-04-2004. There is no dispute whatsoever that these amounts have been collected by the 1st respondent in the course of inspection conducted by him on the authorization dated 27-04-2004 issued by the Joint Commissioner (CT), Enforcement Wing, Hyderabad. The fact remains that as on the date of collection of the amounts, there was no assessment order, as such, passed against the petitioner. The levy and collection of the tax is for the assessment years 2002-03 and 2003-04. The procedure adopted by the respondents herein in collecting the amounts is contrary to the judgment of a Full Bench of this Court in ***Ambica Lamp House, Rajahmundry v. CTO (Int) – I Enforcement, Hyderabad***.

In the counter affidavit filed by the respondents, it is explained that the assessment of tax of the petitioner firm for the assessment years 2002-03 and 2003-04 were initiated and assessment was completed on 29-03-2005 and the assessment orders were accordingly served on the petitioner on 12-04-2005.

In such view of the matter, we are not inclined to issue any direction to the respondents directing to refund the tax of Rs.1,40,204/- since the same has been adjusted by the respondents towards the liability of payment of tax by the petitioner. Further, we find it difficult to sustain the action of the respondents in retaining the compounding fee of Rs.1,40,204/- since such retention, in our considered opinion, is without any authority of law.

For the aforesaid reasons, there shall be a direction directing the respondents to refund the amount of Rs.1,40,204/- (Rupees one lakh fourty thousand two hundred and four only), which was collected by the respondents from the petitioner towards compounding fee, within a period of one week from the date of receipt of this order. There shall be an order accordingly.

The Writ Petition is accordingly disposed of without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:14-09-2005.

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S. ANANDA REDDY, J

NOTE:

Furnish C.C. of the order within three days.

(B/O)

PV